

Message Text

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ACTION EB-08

INFO OCT-01 ARA-10 ISO-00 AGRE-00 CEA-01 CIAE-00
COME-00 DODE-00 FRB-03 H-01 INR-10 INT-05 L-03
LAB-04 NSAE-00 NSC-05 PA-01 CTME-00 AID-05 SS-15
STR-07 ITC-01 TRSE-00 ICA-11 SP-02 SOE-02 OMB-01
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FM AMEMBASSY LIMA

TO SECSTATE WASHDC 901

C O N F I D E N T I A L SECTION 1 OF 2 LIMA 6126

E.O. 11652: N/A

TAGS: ETRD, PE

SUBJECT: LABOR STANDARDS IN PERU

REF: STATE 136706

SUMMARY. PRECISE INFORMATION REGARDING HEALTH AND SAFETY PRACTICES IN PERU IS NOT RPT NOT AVAILABLE. EXISTING SAFETY LAWS HAVE NOT BEEN ORGANIZED INTO A COHERENT SET OF STANDARDS; DATA COLLECTION IS NOT CENTRALIZED; AND IMPLEMENTATION IS INADEQUATE AND SPORADIC. ON THE OTHER HAND, EMBASSY KNOWS OF NO RPT NO DISCRIMINATORY EFFORTS BY THE GOP REGARDING LABOR LAW OR PRACTICE WITH RESPECT TO EXPORTS, IMPORT SUBSTITUTES OR FOREIGN MANUFACTURING INVESTMENT (PARA D, REFTEL). END SUMMARY.

1. INTRODUCTION: THE ILO'S INTERNATIONAL PROGRAM TO IMPROVE WORKING CONDITIONS AND ENVIRONMENT PRODUCED A REPORT ON HEALTH AND SAFETY IN PERU SUBMITTED TO THE GOP NOVEMBER 1977 (PIACT/MDT/4). ALTHOUGH IT IS A RESTRICTED DOCUMENT, EMBASSY HAS BEEN ABLE TO OBTAIN INFORMATION FROM IT RESPONSIVE TO SOME OF THE QUESTIONS RAISED REFTEL. (HOWEVER THE REPORT SHOULD NOT RPT NOT BE CITED UNLESS IT IS OBTAINED OFFICIALLY FROM ILO GENEVA OR CONFIDENTIAL

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FROM THE GOP). PERU HAS NO STANDARDIZED LABOR CODE NOR NATIONAL SYSTEM OF STANDARDS GOVERNING INDUSTRIAL HEALTH AND SAFETY (INDUSTRIAL HEALTH AND SAFETY REGULATIONS AMOUNT TO A COLLECTION OF LAWS AND DECREES DATING FROM 1913). ADMINISTRATON OF EXISTING CONFUSING, OUTDATED, AND CONTRADICTIONARY LAWS IS FURTHER HAMPED BY THE ABSENCE OF CLEARLY DEFINED RESPONSIBILITIES, OVERCENTRALIZATION, INEXISTENCE OF ANY LEGAL HIERARCHY, LACK OF

TRAINED ADMINISTRATORS OR INADEQUATELY TRAINED PERSONNEL, AND OVER-COMPLICATED PROCEDURES AND PROCESSES. THE REPORT NOTES THAT THERE IS NO CENTRAL OFFICE ASSURING UNIFORM APPLICATION OF LABOR HEALTH AND SAFETY LAWS; THAT THERE ARE NOT ENOUGH INSPECTORS; AND THAT THOSE ON THE JOB ARE UNDERPAID, LACKING IN GUIDANCE OR SUPPORT, AS WELL AS IN TRAINING AND EDUCATIONAL MATERIALS. INSPECTORS THE REPORT CONCLUDES, ARE UNABLE TO SECURE THE COLLABORATION OF EITHER EMPLOYERS OR WORKERS. THE REPORT ALSO NOTES THAT THE MINISTRY OF LABOR LACKS FUNDS TO ESTABLISH THE ADMINISTRATIVE INFRASTRUCTURE TO CARRY OUT ITS OVERSEER RESPONSIBILITIES. THERE IS NO REPUTABLE RELIABLE INFORMATION AT THE NATIONAL LEVEL ON: THE CAUSES, FREQUENCY, AND GRAVITY OF WORK RELATED ACCIDENTS; THE PROFILES OF HEALTH AND SAFETY PROBLEMS BROKEN DOWN ACCORDING TO SECTORS AND TECHNOLOGY; THE COST OF WORK-RELATED ACCIDENTS; OR, THE RATE OF COMPLIANCE WITH SAFETY AND HEALTH LEGISLATION.

2. EMBASSY COMMENT: INFORMAL CONVERSATION WITH INDUSTRIALISTS, LABOR LEADERS AND PERSONS WORKING IN INDUSTRIAL HEALTH AND SAFETY CONFIRM THE RATHER BLEAK PICTURE DRAWN BY THE ILO. INSPECTIONS ARE INFREQUENT AND OFTEN SLOPPY. FINES FOR OFFENSES ARE RIDICULOUSLY SMALL, E.G. 500 TO 1,000 SOLES (\$2.60 TO \$5.20 U.S.). IN GENERAL, IT SEEMS THAT TRANSNATIONALS ARE MORE CLOSELY WATCHED THAN NATIONAL COMPANIES OR NATIONAL MINING ENTERPRISES, DESPITE THE FACT THAT THE FORMER ARE USUALLY MORE SAFETY CONSCIOUS AND MORE APT TO SPEND MONEY FOR SAFETY PROGRAMS THAN PERUVIAN COUNTERPARTS. IN ANY EVENT, ENFORCEMENT

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OF SAFETY AND HEALTH STANDARDS (OTHER THAN THE MOST RUDIMENTARY) DEPENDS ALMOST ENTIRELY ON THE COMPANY'S INTERNAL SAFETY PROGRAMS RATHER THAN ON NATIONAL LAWS ENFORCED BY INSPECTORS.

3. FOLLOWING ANSWERS OR COMMENTS KEYED TO REFTEL:

A. (APRA. 3A). CONSTITUTIONALLY NO ONE IN PERU MAY BE REQUIRED TO PERFORM PERSONAL LABOR WITHOUT HIS CONSENT. THIS CIVIL RIGHT IS RESPECTED IN PRACTICE. (ART 23 AND ART. 44 OF 1933 CONSTITUTION.)

B. (PARA 3B). (1) ARTICLE 46 OF THE CONSTITUTION EMPOWERS THE STATE TO ENACT LAWS REGULATING HOURS AND MINIMUM WAGES AS WELL AS TO ESTABLISH A SYSTEM TO PROVIDE FOR SAFETY, HEALTH, AND HYGIENE OF WORKERS. THE MINIMUM AGE FOR EMPLOYMENT IS 14 FOR NONINDUSTRIAL FARM WORK, 16 FOR WORK IN THE FISHING INDUSTRY AND 18 FOR PORT AND MARITIME LABOR. UNDER SPECIAL AUTHORIZATION OF INSPECTORS OF LABOR, CHILDREN AGED 12 TO 14 CAN WORK. WORK MUST NOT EXCEED 6 HOURS A DAY NOR 33 HOURS PER WEEK. MINORS UNDER 21 MAY IN NO CASE PERFORM WORK THAT IS QUOTE PREJUDICIAL TO THEIR PHYSICAL DEVELOPMENT OR MORAL TRAINING UNQUOTE.

(W) THE LAW PROHIBITS WOMEN AND PERSONS UNDER 18 FROM NIGHT WORK, AS WELL AS WORK ON SUNDAYS OR HOLIDAYS OR MORE THAN 5 HOURS SATURDAYS. THEY CANNOT WORK UNDERGROUND NOR IN QUARRIES

NOR IN ANY PLACE WHICH IS DANGEROUS TO HEALTH AND GOOD HABITS. THEY SPECIFICALLY ARE PROHIBITED FROM CLEARING MACHINERY WHILE IT IS OPERATING, AND FROM CONSTRUCTION WORK REQUIRING SCAFFOLDING OF MORE THAN 10 METERS. THEY CANNOT WORK ON OR AROUND HEAVY EQUIPMENT USED FOR LOADING AND UNLOADING SHIPS, NOR IN METAL FOUNDRIES. THEY CANNOT OPERATE CIRCULAR SAWS NOR WORK IN MAKING USING OR TRANSPORTING INFLAMMABLE, EXPLOSIVE AND TOXIC MATERIALS, NOR CAN THEY WORK IN PLACES EXPOSING THEM TO SUCH MATERIALS OR WHERE TOXIC DUSTS OR VAPORS ARE IRRITANTS AND INJURIES TO HEALTH.

(E) FAMILY BUSINESSES AND FARMS ARE EXCLUDED FROM THESE PROVISIONS AS ARE WORKERS ON A NON-FIXED SALARY BASIS, E.G. DOING PIECE WORK.

(4) PERU HAS RATIFIED MORE THAN 50 OF THE ILO CONVENTIONS. THOSE RELEVANT TO MINORS AND WOMEN INCLUDE: HOURS OF WORK (ARTICLE 1) CONFIDENTIAL

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NIGHT WORK (ARTICLES 4 AND 41, 79 AND 90); AGAINST FORCED LABOR (ARTICLE 29 AND 105); PROTECTION AGAINST ACCIDENTS (32); MEDICAL EXAM REQUIREMENTS (73, 77, 78 AND 113); ALONG WITH MINIMUM AGE CONVENTIONS (58, 59 AND 112).

C. (PARA 3C). (1) THE PROHIBITION AGAINST EXPOSING WOMEN AND MINORS TO TOXIC SUBSTANCES WAS NOTED IN PARA B. MOST LAWS REGULATING EXPOSURE TO TOXIC SUBSTANCES APPEAR TO BE OUT-OF-DATE

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INFO OCT-01 ARA-10 ISO-00 AGRE-00 CEA-01 CIAE-00
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LAB-04 NSAE-00 NSC-05 PA-01 CTME-00 AID-05 SS-15
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AND PROTECTIVE DEVICES FOR WORKERS EXPOSED TO SUCH SUBSTANCES ARE

INADEQUATE OR UN-USED. THE LACK OF INSPECTORS, OUTDATED LAWS AND THE FAILURE TO FOLLOW UP ON THE LIMITED INSPECTIONS THAT ARE CARRIED OUT WERE ALL NOTED BY THE ILO.

(2) A SUPREME DECREE OF NOVEMBER 30, 1959 REORGANIZED THE NATIONAL DEPARTMENT OF INDUSTRIAL HYGIENE (FOUNDED IN 1940) INTO THE INSTITUTE OF OCCUPATIONAL HEALTH AND CHARGED THE MINISTRIES OF EDUCATION AND LABOR WITH DEVELOPING AND ENFORCING PROGRAMS OF EDUCATION AND INSPECTION FOR MANUFACTURING AND COMMERCIAL ENTERPRISES. IN 1961, THE MINISTRY OF HEALTH AND SOCIAL ASSISTANCE WAS GIVEN SPECIAL RESPONSIBILITIES FOR HYGIENE AND FOR THE FISHING INDUSTRY. IMPORTANT ENTITIES INVOLVED IN INDUSTRIAL HEALTH AND SAFETY ARE A MINISTRY OF LABOR'S DIVISION OF OCCUPATIONAL SECURITY AND HEALTH; A DIVISION OF SECURITY AND HYGIENE UNDER THE DIRECTOR GENERAL OF MINES IN THE MINISTRY OF MINES AND ENERGY; THE INSTITUTE OF OCCUPATIONAL HEALTH UNDER THE MINISTRY OF HEALTH; A SUBDIVISION FOR INDUSTRIAL SECURITY AND HYGIENE UNDER THE DEPARTMENT OF INDUSTRIAL EVALUATION AND CONTROL IN THE MINISTRY OF INDUSTRY; A BUREAU OF FOOD INSPECTION AND CONTROL IN THE MINISTRY OF FOOD AND AGRICULTURE; AND A SPECIAL INSPECTION DIVISION IN THE MINISTRY OF FISHERIES.

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(3) AS FAR AS MINING HEALTH AND SAFETY IS CONCERNED, PERU'S IMPORTANT LEGISLATION DATES FROM 1950. THE EFFORTS, MOUNTED IN THE LATE FIFTIES TO COMBAT SILICOSIS, SEEM TO HAVE BEEN FAIRLY EFFECTIVE. THE DIVISION OF SECURITY AND HYGIENE IN THE MINISTRY OF MINES HAS SIX OFFICIALS (DIRECTOR, ENGINEER, CHEMICAL ENGINEER AND THREE DOCTORS) IN ITS CENTRAL OFFICE. THIS OFFICE RECEIVES APPROXIMATELY 50,000 MEDICAL REPORTS A YEAR, AND ABOUT 5,000 ACCIDENT REPORTS AMONG WHICH 100 PLUS ARE FATALITIES. THERE ARE ABOUT 70,000 WORKERS IN PERUVIAN MINES. DESPITE LIMITED GOVERNMENTAL ENFORCEMENT THE SOUTHERN PERU COPPER CORPORATION AND THE NATIONALIZED CENTROMIN COMPLEX AS A MATTER OF ESTABLISHED POLICY RUN THEIR OWN SAFETY PROGRAMS AND DO A CONSIDERABLE AMOUNT OF SELF-POLICING REGARDING HEALTH AND SAFETY.

D. (PARA. 3D). (1) IT DOES NOT RPT NOT APPEAR TO EMBASSY THAT THERE ARE DISCRIMINATORY LAWS OR PRACTICES IN EXPORT OR TARGET IMPORT SUBSTITUTION INDUSTRIES IN TERMS OF BANNING UNIONS, COLLECTIVE BARGAINING OR STRIKES, OR IN MAINTAINING ARTIFICIALLY DEPRESSED WAGE LEVELS. INADEQUACIES IN ALL THESE ASPECTS APPLY TO THE ENTIRE ECONOMY (PARA. 4 REFTTEL).

(2) THE GOP IN THE MIDST OF A MAJOR ECONOMIC CRISIS REMAINS COMMITTED IN PRINCIPLE TO SUPPORTING LABOR UNIONS AND COLLECTIVE BARGAINING BUT IN PRACTICE IS USUALLY HOSTILE TO ORGANIZED LABOR. THE MOST RECENT DECREE LAW REGARDING COLLECTIVE BARGAINING LIMITS NEGOTIATIONS SOLELY TO WAGES (EXCLUDING WORKING CONDITIONS).

THIS LAW APPLIES ONLY TO THE PRIVATE SECTOR; THE PUBLIC SECTOR
ADMINISTERS WAGES. STRIKES MUST BE ANNOUNCED 72 HOURS IN ADVANCE
AND TO AVOID BEING DISALLOWED, MUST HAVE GOVERNMENT ACQUIESCENCE.

(3) ALTHOUGH THE GOP HAS SUPPORTED ANTI-UNION MEASURES IN THE
MINING INDUSTRY, THIS YEAR FOR EXAMPLE AT SOUTHERN PERU'S
TOQUEPALA MINE AND ILO SMELTER, THE ISSUE WAS NEITHER WAGES NOR
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WORKING CONDITIONS BUT PREVIOUS FIRINGS FOR STRIKES DECLARED
ILLEGAL BY THE GOP. THE GOP HAS EXPERIENCED EVEN MORE LABOR
DIFFICULTIES IN ITS OWN NATIONALIZED MINES AND SMELTERS. WAGES
AND WORKING CONDITIONS USUALLY HAVE NOT RPT NOT BEEN THE KEY
ISSUES IN THE MINING SECTOR (WHICH CONSTITUTES PERU'S MAJOR EX-
PORT INDUSTRY). INSTEAD, THE CURRENTLY DOMINANT COMMUNIST UNIONS
THERE USUALLY HAVE STRUCK IN PROTEST OVER NATIONAL POLICIES AND
SUBSEQUENT GOVERNMENT INTERVENTION AGAINST THEIR UNION LEADERS.
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